No. 82-1104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GA TECHNOLOGIES INC.,
and GENERAL ATOMIC COMPANY,
Petitioners,

v.

UNITED NUCLEAR CORPORATION,
Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of New Mexico

PETITIONERS' REPLY BRIEF

NATHAN LEWIN
(Counsel of Record)
STEPHEN L. NIGHTINGALE
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
(202) 293-6400

JOHN D. ROBB
JOHN P. EASTHAM
RODEY, DICKASON, SLOAN, AKIN
& ROBB, P.A.
Albuquerque, NM

SETH D. MONTGOMERY
MONTGOMERY & ANDREWS, P.A.
Santa Fe, NM
Attorneys for Petitioners

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1104

GA TECHNOLOGIES INC.,
and GENERAL ATOMIC COMPANY,

Petitioners,

v.

UNITED NUCLEAR CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of New Mexico

PETITIONERS' REPLY BRIEF

We have requested review of a state-court decision (1) that, concededly for the first time,[1] gives losing parties in arbitrations conducted under federal law the right to have their requests to vacate the arbitration awards heard by any state court in the country where they can

[1] Respondent quotes our observation that the New Mexico Supreme Court decision is the *first* to hold that the Federal Arbitration Act does not limit state-court venue and then says, "Even assuming that is so, no court has held to the contrary and the issue obviously does not have the kind of general importance that might warrant review by this Court." Br. in Opp. 26. The future of the federal arbitration remedy as a meaningful way of removing a burden from the judiciary is, of course, contingent on whether arbitration awards

establish *in personam* jurisdiction over the prevailing party,

(2) that gives state courts unprecedented authority to decide, *de novo*, legal issues, such as the *res judicata* effect of state-court proceedings, even though the issues have been argued to, and decided by, an arbitration panel constituted under federal law, and

(3) that has construed two constitutional judgments which this Court rendered in earlier stages of this dispute as being entirely ceremonial and totally devoid of substantive significance.

The history of the litigation between UNC and GAC[2] and the fact that this Court, in addition to granting re-

---

will be perceived as enforceable. The possibility that a losing party in arbitration could shop for a favorable forum to invalidate the award won by his opponent will be a very significant deterrent to selecting arbitration as a means of resolving disputes. On this issue, therefore, the decision is of enormous "general importance."

[2] Although we believe that all of the history is not material to the issues presented in the petition, the components of that history are as follows:

1. The New Mexico courts twice illegally enjoined arbitration and while arbitration was illegally enjoined proceeded to resolve arbitrable issues.
2. This Court in *Felter I* and *Felter II* declared the injunctions unconstitutional and ruled that the New Mexico courts could not interfere with GAC's right to seek arbitration.
3. UNC sought to have the arbitration enjoined in federal court but the court ruled that UNC should present its *res judicata* claims to the arbitrators for resolution.
4. UNC and GAC selected an arbitration panel in accordance with their agreement to arbitrate. UNC presented its *res judicata* claims to the panel and told the panel that the "sig-

view on two occasions, has also turned down several requests by GAC for review at other junctures are irrelevant to the three issues presented in our petition. The legitimacy of the New Mexico forum, the legality of the standard of review it applied, and the correct meaning of this Court's *Felter I* and *Felter II* decisions can and should be resolved by this Court without dissecting all the steps taken by the parties in lower courts. The legal issues presented in our petition may not only be simply and succinctly stated, but they can be straightforwardly resolved.

In its efforts to evade review by this Court of the New Mexico court's decision, respondent takes refuge not only in the allegedly intricate history of the litigation but in surprising misrepresentations of fact and erroneous assertions of law.

First, respondent repeatedly seeks to convey the totally false impression that GAC deliberately bypassed

---

nificance" of *Felter II* was that the panel had the "power" to resolve the *res judicata* issue.

5. The panel issued two awards in San Diego, California. In the first award, the panel ruled that prior judgments of the New Mexico courts were not *res judicata*. The panel then ruled that GAC had not waived its right to arbitrate, that the underlying agreement was not void, and that GAC was entitled to damages and specific performance.

6. UNC took the California awards back to New Mexico state court and the court, at UNC's request, vacated at least the second award. The court resolved the *res judicata* question *de novo*, refused to review the arbitrators' decision on that issue under the standards of Section 10 of the Federal Arbitration Act and vacated the remainder of the panel's decisions on the basis that the panel had been deprived of all power by those earlier judgments of the New Mexico courts.

arbitration and willingly sought, instead, to litigate its dispute with UNC in the New Mexico courts. Br. in Opp. 3, 4, 17, 21. We are criticized for giving "no record citation" for our assertion that "GAC formally expressed its intention to arbitrate with UNC" before it filed an answer and before the entry in April 1976 of the preliminary injunction which forbade arbitration. Br. in Opp. 3 n.3. However, the arbitration panel specifically addressed these issues and ruled against UNC with copious reference to facts which "are not disputed." Pet. App. D, pp. 60a-66a. In addition, we reproduce as Appendices I-III hereto the various pleadings filed by GAC before April 2, 1976 (the date of the unconstitutional injunction struck down in *Felter I*), in which the right to arbitrate was explicitly reserved. We also reproduce as Appendix IV an affidavit by an employee of GAC, filed in opposition to UNC's request for a preliminary injunction, that stated (p. 10a):

> GAC will also seek to join UNC or have UNC joined in lawsuits and arbitration proceedings brought by the power companies.

The following day, UNC's counsel advised the Santa Fe court that GAC "is going to bring us [UNC] into this arbitration if it is not enjoined" and urged that court to enter such an injunction. Transcript of Proceedings, March 24, 1976, p. 38. That relief was granted on April 2, 1976.

We are amazed that UNC could assert, in light of the uncontested documents in this record, which included two successful appeals to this Court, that GAC's filing on November 30, 1977, of a motion to stay the New Mexico trial came "finally . . . after almost two years of intensive

litigation." Br. in Opp. 17.[3] Contrary to the suggestion that GAC slept on its arbitration rights, GAC vigorously sought reversal on appeal of the illegal state-court injunction that prohibited arbitration (and thus limited GAC to litigation in the state court) during the entire period it was in effect. Indeed, the final month of the delay occurred because UNC successfully opposed the lifting of the injunction even after this Court had declared it illegal, on the ground that the trial court had not received a mandate. GAC filed its demand for arbitration in California one day after the injunction was finally vacated by the trial court, and the motion for a stay was submitted on the next day. Arbitration was anything but a belated afterthought.[4]

Second, UNC claims that the limited judicial review of arbitration awards permitted by Section 10 of the Federal Arbitration Act does not apply to the legal issue whether

---

[3] The same false impression is conveyed by the assertion on page 4 of the Brief in Opposition that GAC did not request a stay from the trial court in April 1976, "rather, it continued to litigate in the New Mexico courts for more than 19 months before demanding arbitration under the 1973 Supply Agreement and moving for a stay of court proceedings pending such arbitration." UNC surely knows that, by reason of the then outstanding court order, GAC had no choice but to "continue" with the litigation in New Mexico. Arbitration and any other proceeding outside New Mexico were flatly forbidden.

[4] UNC's argument that "GAC had no basis to complain about the New Mexico court's exercise of jurisdiction prior to the filing of a timely motion for a stay of proceedings pursuant to § 3 of the Federal Arbitration Act" (Br. in Opp. 17) is disingenuous. UNC knows that it would have been entirely pointless to request the Santa Fe court to stay its proceedings under Section 3 in order to permit arbitration when this same court had entered an injunction prohibiting arbitration. GAC could not demand arbitration outside New Mexico (to which it was entitled under the Federal Arbitration Act) so long as it was enjoined from doing so by the New Mexico court.

a party has waived its right to arbitrate. UNC classifies that decision as an issue of "arbitrability," which, it says, is for a court and not for arbitrators to decide. Br. in Opp. 21-24. However, as the cases cited by UNC (Br. in Opp. 24) indicate, "arbitrability" refers to the *scope* of the arbitration clause—*i.e.*, whether a particular dispute comes within those which the parties have agreed to arbitrate. *Domke on Commercial Arbitration*, § 12.01, at 99 (1968). Whether one of the parties has waived the right to arbitrate does not present an issue of "arbitrability," and judicial authorities establish that questions of waiver are for arbitrators. For example, the issue in *International Union of Operating Engineers* v. *Flair Builders*, 406 U.S. 487 (1972), was whether arbitration was barred by laches, and this Court held that the question was suitable for resolution by the arbitrators and should be decided by them. *Accord, World Brilliance Corp.* v. *Bethlehem Steel Co.*, 342 F.2d 362, 364-65 (2d Cir. 1965) (holding that a dispute as to waiver was properly submitted to arbitration); *Domke, supra*, § 19.01, at 182 ("Usually, it is for the arbitrator to determine whether a party has waived his rights under an arbitration clause").[5]

By the same token, the legal *res judicata* issue was correctly presented to the arbitrators, and their decision was binding. Contrary to UNC's representation (Br. in Opp. 25, n.23), the Court of Appeals for the Second Circuit *did* hold in *Boston & Maine Corp.* v. *Illinois Central Railroad Co.*, 396 F.2d 425 (2d Cir. 1968), *aff'g* 274 F. Supp. 257 (S.D.N.Y. 1967), that the arbitrators' decision

---

[5] To the extent that *N & D Fashions, Inc.* v. *DHJ Industries, Inc.*, 548 F.2d 722, 728-29 (8th Cir. 1972) (cited in Br. in Opp. 22 n.18), conflicts with *Flair Builders* and *World Brilliance*, the conflict of decisions provides an additional ground for review.

on a *res judicata* question is conclusive for a reviewing court, irrespective of the court's own view of the law. Moreover, there can be no question of the power of the arbitrators to make an award on the *res judicata* issue. That was the "significance of" *Felter II*, as UNC has admitted, and two federal district courts confirmed that power. *See* Petition, pp. 15, 17 n.9. In conclusion, in this case, the arbitration clause "was clearly broad enough to cover the defense of waiver," *World Brilliance Corp.* v. *Bethlehem Steel Co.*, *supra*, 342 F.2d at 364, as well as UNC's *res judicata* claims. The arbitrators' ruling on these issues is thus subject only to very limited review.[6]

Finally, UNC is unable to suggest any way in which the meaning given to *Felter I* and *Felter II* by the court below (and by UNC) ascribes any substantive consequence whatever to those decisions. We noted in our petition—and it is confirmed by the lack of a response in

---

[6] The New Mexico court's finding that antitrust issues are not arbitrable does not render the entire contract dispute between UNC and GAC nonarbitrable. Claims under state (as opposed to federal) antitrust and securities acts are subject to federal arbitration. *Romnes* v. *Bache & Co.*, 439 F. Supp. 833 (W.D. Wis. 1977); *Barron* v. *Tastee Freez Int'l, Inc.*, 482 F. Supp. 1213, 1216-17 (E.D. Wis. 1980). *See Allison* v. *Medicab International, Inc.*, 92 Wash. 2d 199, 597 P.2d 380 (1979) (Federal Arbitration Act requires arbitration of claims under state franchising statute notwithstanding state law making such claims nonarbitrable). In addition, the arbitrators in this case noted that the mere assertion of an antitrust defense by a party to an arbitration clause cannot automatically bar the arbitration. "Such a result would render contractual arbitration clauses meaningless, and would frustrate state and federal arbitration statutes" (Pet. App. D, p. 109a). The arbitrators went on to discuss UNC's alleged "antitrust claim" and to conclude that UNC's antitrust allegations were so totally lacking in substance that they did not even meet the minimal standard of whether there was a *bona fide* antitrust claim. Pet. App. D, pp. 110a-113a.

UNC's Brief in Opposition—that if the New Mexico court is right, *Felter I* and *Felter II* have now been reduced to empty formalisms. In UNC's view, these constitutional rulings gave GAC a right which was devoid of meaning even before *Felter II* was decided. This view suggests that this Court took the effort to issue these decisions for no purpose whatever. As the arbitrators concluded, however, *Felter I* and *Felter II* should not be treated as "meaningless gestures." Pet. App. D, p. 59a. To be sure, this Court has denied petitions for certiorari filed by GAC which cited the prospect that *Felter I* and *Felter II* would be deprived of effect if the New Mexico courts persisted in reading those decisions narrowly. But not until the New Mexico Supreme Court actually wiped away the arbitration award which resulted from *Felter I* and *Felter II* did it become unequivocally clear that *Felter I* and *Felter II* have been robbed of all content. This Court

should grant certiorari to reverse the frustration of its mandate.

Respectfully submitted,

NATHAN LEWIN
(Counsel of Record)

STEPHEN L. NIGHTINGALE
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
(202) 293-6400

JOHN D. ROBB
JOHN P. EASTHAM
RODEY, DICKASON, SLOAN, AKIN
& ROBB, P.A.
Albuquerque, NM

SETH D. MONTGOMERY
MONTGOMERY & ANDREWS, P.A.
Santa Fe, NM
Attorneys for Petitioners

FEBRUARY 1983

APPENDIX I

[Filed February 23, 1976]

STATE OF NEW MEXICO COUNTY OF SANTA FE
IN THE DISTRICT COURT

No. 50827

UNITED NUCLEAR CORPORATION,
a Delaware corporation,

Plaintiff,

v.

GENERAL ATOMIC COMPANY, a partnership composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,

Defendant.

MOTION TO DISMISS

Defendant General Atomic Company, by and through its attorneys, moves the Court to quash service had on this defendant and to dismiss all counts and causes of action stated in the Complaint for lack of personal jurisdiction over the defendant, without waiving its right to demand arbitration on all causes and issues raised by United Nuclear Corporation herein. Proper service upon defendant under the New Mexico longarm statute, or other service and process statutes of New Mexico, has not been made. An Affidavit is attached hereto.

MODRALL, SPERLING, ROEHL,
HARRIS & SISK
Post Office Box 2168
Albuquerque, New Mexico 87103

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & BUELL

/s/ By Wm. Federici
Attorneys for Defendant

APPENDIX II

[Filed February 23, 1976]

STATE OF NEW MEXICO COUNTY OF SANTA FE
IN THE DISTRICT COURT

No. 50827

UNITED NUCLEAR CORPORATION,
a Delaware corporation,
Plaintiff,

v.

GENERAL ATOMIC COMPANY, a partnership composed of
Gulf Oil Corporation and Scallop Nuclear, Inc.,
Defendant.

MOTION FOR PROTECTIVE ORDER

Comes now the defendant, General Atomic Company, by and through its attorneys, and moves this Court for a protective order staying the defendant's filing of answers or objectives to those interrogatories posed herein by plaintiff, without waiving its right to demand arbitration on all causes and issues raised by United Nuclear Corporation herein, on the grounds that jurisdiction in this cause is at issue and strongly contested by defendant; that the Court has set March 5, 1976, for a hearing on its jurisdiction herein; and that to cause defendant to answer or object to interrogatories prior to such determination would be unduly oppressive and burdensome and quite

possibly be needless, and such delay does not adversely affect the plaintiff herein.

MODRALL, SPERLING, ROEHL,
HARRIS & SISK
Post Office Box 2168
Albuquerque, New Mexico 87103

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & BUELL
Post Office Box 2307
Santa Fe, New Mexico 87501

/s/ By Wm. Federici
Attorneys for Defendant

APPENDIX III

[Filed March 9, 1976]

STATE OF NEW MEXICO COUNTY OF SANTA FE
IN THE DISTRICT COURT

NO. 50827

UNITED NUCLEAR CORPORATION,
a Delaware corporation,

Plaintiff,

v.

GENERAL ATOMIC COMPANY, a partnership composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,

Defendant.

MOTION TO DISMISS

Comes now the defendant, General Atomic Company, by and through its attorneys, and moves this Court to dismiss this cause of action for the failure to join certain parties under the requirements of Rule 19 of the New Mexico Rules of Civil Procedure, without waiving its right to demand arbitration on all causes and issues raised by United Nuclear Corporation herein, and as grounds therefor states and alleges that Duke Power Company, a North Carolina corporation, Indiana & Michigan Electric Company, an Indiana corporation, Detroit-Edison Company, a Michigan corporation, and Commonwealth Edison Company, an Illinois corporation are parties whose joinder in this suit is necessary to assure just adjudication of all claims and issues alleged by plaintiff herein.

Wherefore, defendant General Atomic Company prays that this action be dismissed or that the Court order the joinder of such parties in this action.

MODRALL, SPERLING, ROEHL,
HARRIS & SISK
Post Office Box 2168
Albuquerque, New Mexico 87103

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & BUELL
Post Office Box 2307
Santa Fe, New Mexico 87501

/s/ By Frank Andrews
Attorneys for Defendant

APPENDIX IV

[Filed March 23, 1976]

AFFIDAVIT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

A. A. H. KOCH, being first duly sworn, upon information and belief states and alleges:

1. I am Manager, Special Projects, Uranium and Light Water Fuel Division of General Atomic Company ("GAC").

2. I am an attorney, admitted to practice in the State of California. During the period from September 1971 to December 1973, I was counsel for Gulf United Nuclear Fuels Corporation ("GUNF"), and as such was responsible for all legal matters of that company.

3. I am familiar with all of the circumstances involved in the suit, United Nuclear Corporation vs. General Atomic Company, No. 50827, filed in Santa Fe County, New Mexico. I am familiar with the 1973 Uranium Supply Agreement (Exhibit 5 to the Complaint in the above action). I am also familiar with the five agreements with four power companies which form the basis of the 1973 Uranium Supply Agreement. These agreements were originally made between United Nuclear Corporation ("UNC") and the power companies and confirmed either with formal contracts in the case of the two Commonwealth Edison Company ("Commonwealth") agreements and the Indiana and Michigan Electric Company ("I&M") agreement or with informal letter agreements in the case of the Duke Power Company ("Duke") agreement and the Detroit Edison Company ("Detroit Edison") agreement. All five of these agreements were subsequently assigned to GUNF and later to GAC, and are referred to in that agreement and hereinafter as the "UNC Agreements." Those agreements, the original

commitment dates, the names of the power companies involved, the approximate quantities of uranium involved, and the assignment process under which GAC became involved in the agreements are all indicated on Attachment 1 to this Affidavit.

4. UNC is obligated pursuant to Article IV (Attachment 2 hereto) of the 1973 Uranium Supply Agreement to supply a described quantity of uranium (about eight million pounds) if and to the extent GAC is required to supply such quantities to the four power companies pursuant to the UNC Agreements.

5. In May 1975, UNC failed to deliver 500,000 pounds to American Electric Power Service Corporation ("AEP") as scheduled pursuant to the 1973 Uranium Supply Agreement and the I&M agreement. UNC has continued to refuse to deliver this quantity despite I&M's demands for delivery. I&M claims that the I&M fuel agreement requires the supply of said 500,000 pounds of uranium. This quantity is Requirements Uranium under the 1973 Uranium Supply Agreement, and with respect to Requirements Uranium the 1973 Uranium Supply Agreement requires UNC to supply the quantity of uranium which GAC is required to supply pursuant to the I&M fuel agreement. (See Attachment 2.)

7. In September 1975, UNC made a 67,000 pound delivery to GAC for Commonwealth as called for by the terms of the 1973 Uranium Supply Agreement and the Commonwealth Dresden agreement.

8. In December 1975, UNC failed to deliver 385,000 pounds of uranium to Duke as scheduled. UNC has continued to refuse to deliver this quantity despite Duke's demands for delivery of the material. Duke claims that delivery of this quantity in December 1975 was required by the terms of the Duke fuel agreement. This quantity is Requirements Uranium under the 1973 Uranium Supply Agreement, and with respect to Requirements Uranium the 1973 Uranium Supply Agreement requires UNC to supply the quantity of uranium which

GAC is required to supply pursuant to the Duke fuel agreement.

9. In February 1976, UNC failed to deliver 391,000 pounds of uranium to GAC as scheduled pursuant to the 1973 Uranium Supply Agreement and the I&M fuel agreement. This quantity of uranium is needed immediately for fabrication by GAC's subcontractor of fuel assemblies scheduled to be delivered to I&M in December 1975.

10. As the result of the failure of UNC to make the deliveries to I&M and to GAC for use in I&M fuel assemblies, I&M has filed suit against Gulf Oil Corporation ("Gulf") and Gulf and Scallop Nuclear Inc. doing business as GAC.

11. As a result of UNC's failure to make delivery to Duke, Duke has demanded arbitration pursuant to an arbitration provision of the Duke fuel agreement.

12. Communications from Detroit Edison and Commonwealth have caused us to believe that these companies are also contemplating legal action against GAC if UNC continues to fail to make deliveries pursuant to the 1973 Uranium Supply Agreement and the UNC Agreements.

13. The agreements for the supply of this uranium were originally made between the four power companies and UNC. The power companies, UNC and GAC have during all relevant periods contemplated that the uranium to be supplied under the UNC Agreements (except for half of the Duke first core material) would be supplied by UNC. Commonwealth has never released UNC from UNC's original obligation to Commonwealth under the Dresden and LaSalle Contracts. I&M has never released UNC from UNC's original obligations to I&M under the I&M fuel agreement. UNC has guaranteed performance on all of the UNC Agreements.

14. With respect to the quantity of uranium defined in the 1973 Uranium Supply Agreement as "Requirements Uranium" (the first approximately one-third of the uranium covered by the 1973 Uranium Supply Agreement), UNC's obliga-

tions to GAC are the same as GAC's uranium supply obligations (except for one-half of the Duke first core uranium) to the power companies (Article IV of the 1973 Uranium Supply Agreement—Attachment 2).

15. Many disputes have arisen regarding these uranium supply obligations and more are expected to arise. This is primarily because the current market price of uranium is generally about three to five times the prices referred to in the agreements. UNC has indicated (1) that UNC's performance as required by the UNC Agreements is excused as having been rendered commercially impracticable; (2) that UNC's performance under at least one of the UNC Agreements is excused based on the power company's fraud; (3) that UNC is entitled to price increases under the terms of the UNC Agreements; (4) that deliveries should be delayed pursuant to the terms of the UNC Agreements; and (5) that the quantities that the power companies are demanding are in excess of the quantities called for by the agreement. The power companies argue (1) that performance is not excused for reasons of commercial impracticability; (2) that performance is not excused for any reason; (3) that delivery at the prices referred to in the contract is required; (4) that deliveries should not be delayed; and (5) that the quantities demanded are the quantities to which the power companies are entitled. Some of the specific legal issues which are being or may be raised both by the power companies and UNC are described in Attachment 3 hereto.

16. If GAC is required to litigate the same legal issues in one forum with UNC and in different forums with the power companies, there is a possibility of inconsistent results. The losses to GAC resulting from some of these potential inconsistent results are shown in Attachment 3. The total potential loss to GAC could be in excess of $500 million.

17. Because of this, GAC has sought to join the power companies and UNC together for the resolution of these legal and factual issues. It is for this reason that GAC brought the interpleader action in the Federal District Court for the Dis-

trict of New Mexico. Even though this action, had it been successful, would have probably stayed all other lawsuits relating to the subject matter, thereby greatly reducing litigation expense and effort, UNC (as well as the power companies) opposed the jurisdiction of the Federal Court. GAC's desire to avoid inconsistent results is the primary purpose for GAC's seeking to require the joinder of the power companies in the Santa Fe lawsuit. Again, for the purpose of avoiding inconsistent results, GAC will also seek to join UNC or to have UNC joined in lawsuits and arbitration proceedings brought by the power companies. UNC is already a party in the arbitration demand filed on October 29, 1974, by Commonwealth regarding the LaSalle Contract.

18. Specifically, GAC plans to seek the joinder of UNC in the lawsuit filed on February 24, 1976, by I&M in the United States District Court for the Southern District of New York. GAC also expects to seek the participation of UNC in the arbitration proceeding demanded by Duke on February 13, 1976.

19. The joinder of UNC in these proceedings would not be for the purpose of subjecting UNC to vexatious, oppressive and multiple litigation, but would be for the purpose of avoiding inconsistent results as between GAC and its customers and as between GAC and its supplier.

Executed at San Diego, California this 22nd day of March 1976:

/s/ A. A. H. Koch
A. A. H. Koch